IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5851 OF 2006

Mrs.Sheetal A. Panwalkar ....Petitioner
V/s.
The State of Maharashtra & Ors. ....Respondents

Mr.N.V. Pradhan i/b Mr.Mahesh Pradhan for the Petitioner.

Mr.C.R. Sonawane, AGP for Respondent Nos.1 to 3.

Ms.Preetam P. Tendulkar for Respondent Nos.5 to 8.

Mr.N.V. Bandiwadekar for Respondent No.7.

CORAM : F.I. REBELLO &
S.J. VAZIFDAR, JJ.
DATED : 20TH FEBRUARY, 2007.

P.C. :

1. The Petitioner has moved this Court to challenge the orders dated 4.3.2003 and 18.7.2006. The effect of these orders is that the Petitioner has been reverted from the post of Senior Clerk to Junior Clerk. In so far as the Management is concerned, they have acted on the order of this Court passed in Writ Petition No.4511 of 1999 which was disposed of on 18.9.2002. The Petitioner herein was not party to the said Petition. The Petitioner therein who is Respondent No.7 herein had contended that he is senior and should have been appointed as a Senior Clerk.

2. A Division Bench of this Court was pleased to direct the appointment of Respondent No.7 to the post of Senior Clerk. The Petitioner on coming to know about the same, preferred Civil Application No.678 of 2003 which was disposed of by an order dated 26.2.2004 with a direction that if the order is implemented, it will be open to the Petitioner herein based on fresh cause of action to challenge the same. The learned Division Bench also made it further clear that all challenges are left open for consideration. The Petitioner based on the said order on failure of say giving an opportunity, has moved this Court.

3. On behalf of Respondent No.7, the learned counsel points out that since the order of reversion challenged before this Court is appealable under Section 9 of the M.E.P.S. Act, consequently this is not a fit case for us to exercise our extra-ordinary jurisdiction. This issue in this case, would be basically to decide the inter-se seniority of the Petitioner and Respondent No.7 as Junior Clerk. Considering the rival contentions that would require, recording a finding of fact. In our opinion therefore, as there is a statutory appeal, it would be appropriate that the Petitioner approaches the

Tribunal by preferring an Appeal.

4. It is made clear that the decision of this Court in Writ Petition No.4511 of 1999, disposing of the Petition on 18.9.2002 would not stand in the way of the Tribunal recording a finding of fact as the Petitioner was not a party in that Petition and as such the contention of the Petitioner was not considered. It also appears that the Management did not file the reply.

. Be that as it may, we are of the opinion that in the Appeal to be preferred it would be open to the Tribunal to consider the rival contentions as also the fact that the Petitioner was holding the post of Senior Clerk right from 1985. The impugned order not to be given effect for a period of six weeks from today. It will be open to the Petitioner to move the Tribunal for whatever interim relief he is entitled to.

4. With the above observations, the Writ Petition is accordingly disposed of. The parties agree that they will not raise the question of limitation and the matter will be heard on merits.

(S.J. VAZIFDAR, J.) (F.I. REBELLO, J.)